

### C. REMARKS

In the Office Action of 30 July 2004, claims 37, 38, and 42 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,626,607 to *Malecki et al.*; claim 39 was rejected under 35 U.S.C. § 103 as being obvious in view of U.S. Patent No. 5,626,607 to *Malecki et al.* in view of U.S. Patent No. 6,212,426 to *Swanson*. Claim 41 was indicated to contain allowable subject matter, but was objected to as dependent on a rejected claim. In response, claim 37 has been amended as described below and claim 41 has been amended to independent format, including the limitations of its base claim. With these amendments, it is respectfully submitted that all of the claims are in condition for allowance.

The Office Action notes that

“Applicant argues that the invention as claimed is not directed to additional and separate elements. The claims as worded do not support applicant’s point of distinction. Malecki et al discloses an elongate one piece malleable hollow shaft (680). This shaft in combination with the tissue clamp (602), the handle assembly (figures 3, 10A, 17 and 31A and column 22, lines 45+) and the elongate actuator (608) anticipates the invention as claimed.”

In response, claim 37 has been amended to specify “the elongate, one-piece, malleable hollow shaft [is] positional in different curvatures without the assistance of a positioner.” This should be noted is the same revision that was made in companion U.S. Patent Application Serial No.10/412,044 following a 27 March 2006 telephone interview with Examiner Isabella.

As previously pointed out by Applicant, in U.S. Patent No. 5,626,607 to *Malecki et al.* a ***separate malleable positioner*** is provided for positioning the clamp about the body structure. Once again, “680” is not a “hollow shaft” as alleged in the Office Action, but rather is an “introducer 680.” While no explicate teaching identifies the shaft of *Malecki et al.* as flexible rather than malleable, the teaching of *Malecki et al.* as a whole clearly defines the shaft as flexible: the whole point of having an “separate, malleable introducer 680” is to position the clamp in the patient:

***“the clamp assembly preferably includes an introducer 680 for facilitating introduction of the clamp 602 into the patient.*** The introducer 680 has a clamp holder 682 which is releasably fixed to the clamp 602. The introducer 680 has a pair of prongs 684 which engage a pair of holes 686 in the clamp 602. The proximal end of the introducer 680 has a rib 688 which engages a slot 690 in the handle 604. ***The introducer 680 also has a malleable shaft 681 which can be bent to a desired shape.*** Although it is preferred to releasably couple the introducer 680 to the handle 604, the

introducer 680 may be completely independent of the handle 604. Referring to FIG. 49, *the introducer 680 has a length similar to the length of the clamp assembly 600 so that the sheath 610 is pulled taught when the introducer 680 is coupled to the clamp 602 and handle 604.*"

*Malecki et al.*, Column 23, lines 12-28 (emphasis added). Thus, *Malecki et al.* actually teaches away from the presently claimed invention by requiring an additional, separate, detachable (during surgery) introducer. Therefore, the rejection of claims 37-39 and 42 should be withdrawn.

The Commissioner is authorized to charge any deficiency in fees or credit any overpayment to Deposit Account No. 50-0256. A duplicate copy of this correspondence is enclosed for such purpose.

Respectfully submitted,

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